THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 2918 of 1999

Dated 6th June 2007

Between:

The Sirpur Paper Mills Limited,
Sirpur Kagaz Nagar, rep.by its Corporate Director,
Sri P.Vaman Rao

... Petitioner

and

The Divisional Forest Officer, Logging Division,
Atmakur, Kurnool District & others

... Respondents

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O R D E R:

The petitioner is a paper mill. The principal raw material is bamboo cuts, which is purchased mainly from the Forest Department.

The petitioner entered into an agreement on 23.2.1991, with the Forest Department of the Government of Andhra Pradesh, for purchase of Bamboo Cuts, and it was to be in force for five years. The procurement was from three divisions, *viz;* Nandyal and Atmakur of Kurnool District and Giddalur of Prakasam District.

Bamboo Cuts are to be bundled with a rope named as 'Sebai string', which is said to be available, only in the State of Orissa. The cost of the string is to be borne by the petitioner.

During the year 1993-94, the petitioner was levied 0-30 ps,

towards cost of the string, for each bundle, by Nandyal and Giddalur Divisions. However, Atmakur Division levied 0-69 ps., for that item. The difference constituted Rs.5,65,000/-. Through an order, dated 31.1.1999, proceedings under Section 70 of the A.P. Forest Act were initiated, against the petitioner, for recovery of the said amount. The same is challenged in this writ petition.

Petitioner contends that the usual cost of the string for each bundle was 0-25 ps., and when two neighbouring divisions have levied only 0-30 ps., there was absolutely no justification for Atmakur Division, to charge 0-69 ps., for the same product.

On behalf of respondents, a detailed counter affidavit is filed. It is stated that the string that was used by the Atmakur Division was thicker in nature, and on account of their not being conversant with the bundle, the workers employed by the division have used a little quantity more, than what was usually needed. The necessary supporting documents are also filed.

Sri V.Srinivas, learned counsel for the petitioner, submits that before any steps are taken, due ascertainment of the amount has to be undertaken, and in the instant case, the notice was issued, without taking such a step. He further submits that there was absolutely no factual basis for demanding extra cost, by one of the three divisions.

Learned Government Pleader for Forests, submits that according to the terms of the agreement, it is the obligation of the petitioner, to bear the cost of the string, and since the petitioner did not pay the same, the impugned notice came to be issued. He contends that if the petitioner disputes its obligation to pay the amount, it ought to have filed a suit for declaration, and the writ petition is not maintainable.

The agreement, dated 23.2.1991, provides for two types of procurement of material. The first is that the department itself would get the bamboo trees fell, cut them into bits, and bundle them, for being supplied to the petitioner. The second is that the petitioner would be allotted an area, in which it would undertake the same process. For both the categories, the bundling of the Bamboo Cuts is to be done by 'Sebai string', and in either case, it is the obligation of the petitioner, to bear the cost of the string. It is noteworthy that the agreement does not stipulate any particular price, quantity, or quality of string, to be used for this purpose.

It is no doubt true that whenever proceedings are to be initiated for recovery of any amount, by the Department of the Government, by invoking the provisions of the Revenue Recovery Act, there must be an ascertainment. The nature of ascertainment, if undertaken for each case, would depend upon the type of transaction. It may be true that the petitioner was levied 0-30 ps., per bundle, by Nandyal and Giddalur Divisions, towards the cost of string. The demand of 0-69 ps., by Atmakur Division, for the same bundle, cannot be said to be *ex-facie* illegal. The plea of the Department that the string that was utilized by Atmakur Division was thicker in size and a little more quantity was utilized in bundling the Bamboo Cuts, cannot be brushed aside, straight away. At any rate, if the petitioner intends to dispute the plea of the Forest Department, it has to file a suit and establish its plea, by adducing evidence. This court cannot embark enquiry into such disputed questions of fact.

The writ petition is accordingly dismissed. It is, however, made clear that it is open to the petitioner, to avail the remedy, by filing a suit, if it is otherwise lawful. There shall be no order as to costs.

6th June 2007

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